Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-544

BLUE CROSS OF WESTERN PENNSYLVANIA,
a non-profit Corporation,
Petitioner
v.
HONORABLE RABE F. MARSH,
United States District Judge,
Nominal Respondent
(ALMA COLES, an individual),
Real Party In Interest-Respondent

SUPPLEMENT TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Pursuant to Rule 24(5) of Rules of the Supreme Court of the United States, Petitioner, Blue Cross of Western Pennsylvania, hereby supplements its Petition for Writ of Certiorari and appends excerpts from the Order of District Judge Muir of the United States District Court for the Middle District of Pennsylvania in *In re Anthracite Coal Antitrust Litigation* dated and filed September 30, 1977 as Appendix L. The Petitioner calls attention to this new authority, not available at the time of last filing, since it illustrates the importance of this issue in the conduct of class actions under the Federal

Rules of Civil Procedure and the desire of federal district courts to enter such orders, notwithstanding the decision by the Third Circuit in *Coles v. Marsh,* sought to be reviewed by the Petition for Writ of Certiorari filed herein.

Respectfully submitted,

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Appendix L—Excerpts from Order of the United States District Court for the Middle District of Pennsylvania in In re Anthracite Coal Antitrust Litigation, dated and filed September 30, 1977.

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

IN RE ANTHRACITE COAL ANTITRUST LITIGATION THIS DOCUMENT RELATES TO: ALL ACTIONS	MASTER FILE NO. MDL 293

ORDER

September 30, 1977

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On September 26, 1977, 29 attorneys representing the various parties met with the Court in the first pre-trial conference. At that conference, certain agreements were entered into by the parties and certain oral orders issued by the Court. The purpose of this Order is to reduce such oral agreements and oral orders to writing and in addition to make certain modest changes in the suggested pre-trial Order No. 4 submitted by all parties to the Court. The provisions contained in §12.5 of this Order have been agreed to by the parties notwithstanding Coles vs. Marsh,——F.2d——(3d Cir. July 28, 1977).

NOW, THEREFORE, IT IS ORDERED THAT:

* * *

12.5 In these coordinated actions, all parties hereto and their counsel are forbidden directly or indirectly, orally or in writing, to communicate concerning such actions with any potential or actual class member not a formal party to these coordinated actions without the consent and approval of the proposed communication and proposed addressees by order of this Court. Any such proposed communication shall be presented to this Court in writing with a designation of or description of all addressees and with a motion and proposed order for prior approval by this Court of the proposed communication. The communications forbidden by this order include, but are not limited to, (a) solicitation directly or indirectly of legal representation of potential and actual class members who are not formal parties to the class action; (b) solicitation of fees and expenses and agreements to pay fees and expenses from potential and actual class members who are not formal parties to the class action; (c) solicitation by formal parties to the class action of requests by class members to opt out in class actions under subparagraph (b)(3) of Rule 23, F.R.Civ.P. and (d) communications from counsel or a party which may tend to misrepresent the status, purposes and effects of the class action, and of any actual or potential Court orders therein which may create impressions tending, without cause, to reflect adversely on any party, any counsel, this Court, or the administration of justice. The obligations and prohibitions of this Order are not exclusive. All other ethical, legal, and equitable obligations are unaffected by this Order. This order does not forbid (1) communications between an attorney and his client or a prospective client, who has on the initiative of the client or prospective client consulted with, employed or proposed to employ the attorney, or

(2) communications occurring in the regular course of business or in the performance of the duties of a public office or agency (such as that of the Attorney General) which do not have the effect of soliciting representation by counsel, or misrepresenting the status, purposes or effect of the action and orders therein. If any party or counsel for a party asserts a constitutional right to communicate with any member of the class without prior restraint and does so communicate pursuant to that asserted right, he shall within five days after such communication file with the Court a copy of such communication, if in writing, or an accurate and substantially complete summary of the communication, if oral.